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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL SHANTE PITTS,

Defendant and Appellant.

B208444

(Los Angeles County
Super. Ct. No. NA069507)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles D. Sheldon, Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H. Borjon, Supervising Deputy Attorney General, and A. Scott Hayward, Deputy Attorney General, for Plaintiff and Respondent.

Michael Pitts appeals from the judgment entered upon resentencing following remand by this court in *People v. Pitts* (Jan. 29, 2008, modified Feb. 22, 2008, B193004) [nonpub. opn.] (*Pitts I*). He contends that the sentence imposed violated Penal Code section 654. We affirm.

BACKGROUND

As pertinent to this appeal, defendant was convicted by jury of possession of a firearm by a convicted felon (Pen. Code, § 12021, subd. (a); count 1), unlawful possession of ammunition (Pen. Code, § 12316, subd. (b)(1); count 2), possession of a controlled substance for the purpose of sale (Health & Saf. Code, § 11378; count 4), and possession of marijuana for the purpose of sale (Health & Saf. Code, § 11359; count 5). As to count 4, the jury further found that defendant was personally armed with a firearm while in possession of a controlled substance. (Pen. Code, § 12022, subd. (c); further section references are to the Penal Code.)

Defendant's convictions arose from the execution of a search warrant by Long Beach police officers at defendant's residence on March 9, 2006. "During the search, officers recovered a loaded 12-gauge shotgun, 59.04 grams of marijuana inside a plastic bag in a cigar box, two boxes of different caliber ammunition, plastic bags, two scales and a marijuana horticulture book. Defendant was searched; a blue plastic bag containing 3.89 grams of methamphetamine and \$148 in cash were recovered from his pocket." (*Pitts I*, *supra*, B193004 at p. 3.)

In *Pitts I*, we concluded, *inter alia*, that the trial court erroneously failed to conduct a hearing on defendant's motion to suppress evidence and remanded the matter to permit such a hearing. (*Pitts I*, B193004 at pp. 7, 16.) On remand, defendant's motion to suppress was denied by the trial court and defendant was resentenced. Count 4 (possession of a controlled substance for the purpose of sale) was selected as the principal offense, on which the court imposed the middle term of two years. The sentence was enhanced by three years under section 12022, subdivision (c), for a total term of five years. Concurrent sentences were imposed on count 1 (possession of a firearm by a

convicted felon), count 2 (unlawful possession of ammunition), and count 5 (possession of marijuana for the purpose of sale).

DISCUSSION

Defendant contends that the trial court violated section 654 by failing to stay imposition of sentence on count 2 individually and on counts 1 and 2 collectively. We disagree.

Section 654 precludes separate punishment for crimes that are incident to the same intent and objective. (*People v. Latimer* (1993) 5 Cal.4th 1203, 1208.) Conversely, if the defendant “entertained multiple criminal objectives which were independent of and not merely incidental to each other, he may be punished for independent violations committed in pursuit of each objective even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.” (*People v. Beamon* (1973) 8 Cal.3d 625, 639.) “‘The question of whether the acts of which defendant has been convicted constitute an indivisible course of conduct is primarily a factual determination, made by the trial court on the basis of its findings concerning the defendant’s intent and objective in committing the acts. This determination will not be reversed on appeal unless unsupported by the evidence presented at trial.’ [Citation.]” (*People v. Nichols* (1994) 29 Cal.App.4th 1651, 1657.) Section 654 applies to concurrent sentences. (*People v. Deloza* (1998) 18 Cal.4th 585, 592.)

With respect to count 2 individually, defendant relies on *People v. Lopez* (2004) 119 Cal.App.4th 132, in which concurrent sentences had been imposed for the crimes of unlawful possession of a firearm and unlawful possession of ammunition that had been loaded in the firearm. The court held that “[w]here, as here, all of the ammunition is loaded into the firearm, an ‘indivisible course of conduct’ is present and section 654 precludes multiple punishment. (*Lopez*, at p. 138.)

But *Lopez* is distinguishable because defendant here possessed two boxes of different caliber ammunition, none of which was loaded into the 12-gauge shotgun that was also found and was the subject of count 1 and the enhancement in count 4. As such, substantial evidence supported the trial court’s implied finding that defendant entertained

a different objective and intent in possessing the shotgun and the ammunition, and separate (albeit concurrent) punishment was permissible.¹

Defendant further contends that sentence should have been stayed on counts 1 and 2 because his possession of both the firearm and the ammunition was committed with the same objective and intent as his being armed with a firearm, which formed the basis of the enhancement that was imposed in conjunction with count 4. The parties agree that case authority is split on the applicability of section 654 to sentencing enhancements where, as here, the enhancements relate to the circumstances of the crime rather than to the status of the defendant. (See *People v. Palacios* (2007) 41 Cal.4th 720, 728.) But unless the Supreme Court ultimately resolves this question otherwise, we agree with the holdings of cases such as *People v. Palmore* (2000) 79 Cal.App.4th 1290, 1298, which reason that section 654 does not apply to enhancements that do not define an offense but only increase punishment for that offense. Accordingly, defendant's contention must be rejected.

¹ An analogous issue regarding whether a defendant was properly sentenced on multiple counts of being a felon in possession of a firearm where he was discovered in a closet with a cache of weapons is pending before the Supreme Court in *People v. Correa* (2008) 161 Cal.App.4th 980, review granted July 9, 2008, S163273.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

BAUER, J.*

* Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.